

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

DR. JACK F. TRACY, II,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-13-172-HE
)	
SAFECO INSURANCE COMPANY OF)	
AMERICA,)	
)	
Defendant.)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant Safeco Insurance Company of America ("Safeco") hereby removes the above-captioned action from the District Court of Cleveland County, State of Oklahoma, to the United States District Court for the Western District of Oklahoma. In support of this removal, Safeco states as follows:

1. On or about January 22, 2013, Plaintiff commenced an action in the District Court of Cleveland County, State of Oklahoma, entitled *Dr. Jack F. Tracy, II v. Safeco Insurance Company of America*, as Case No. CJ-2013-101 (the "State Court Action"). A true copy of the state court docket sheet, as well as all process,

pleadings, and orders served in the State Court Action, are attached hereto as Exhibits 1 through 3.

2. Safeco was first served with the summons and a copy of the Petition in the State Court Action on or about January 28, 2013. A copy of the summons is included as Exhibit 2, attached hereto. This Notice of Removal is timely filed under the provisions of section 1446.

3. The Western District of Oklahoma includes the state judicial district in which Plaintiff filed his Petition, attached hereto as Exhibit 3.

4. This is a civil action over which this Court has original jurisdiction based on diversity of citizenship and amount in controversy pursuant to 28 U.S.C § 1332, and which may be removed to this Court pursuant to 28 U.S.C. § 1441. At the time of filing this action and at the present time, Plaintiff was and is a resident and citizen of the State of Oklahoma. Safeco is a New Hampshire company with its principal place of business in Boston, Massachusetts, and is, therefore, a citizen of the States of New Hampshire and Massachusetts under 28 U.S.C. §1332(c)(1). Safeco is not a citizen of Oklahoma.

5. The Petition asserts a cause of action for breach of good faith and fair dealing in handling a claim on an insurance policy. (*See* Exhibit 3, Petition, at ¶

5, and Prayer for Relief). The Petition asserts Plaintiff's damages are "\$74,999.00, plus prejudgment interest, *attorney fees*, and costs of this action." (Exhibit 3, Petition, at ¶ 10, and Prayer for Relief) (emphasis added). It is well settled that attorneys' fees are included in determining amount in controversy.¹ See *Woodmen of World Life Ins. Society v. Manganaro*, 342 F.3d 1213, 1218 (10th Cir. 2003); *Lindley v. Life Investors Ins. Co. of Am.*, No. 08-CV-0379-CVE-PJC, 2008 U.S. Dist. LEXIS 81974, at *13 (N.D. Okla., Oct. 2, 2008). Virtually any award of attorneys' fees would put Plaintiff's alleged damages in excess of \$75,000. Accordingly, the amount in controversy exceeds \$75,000, exclusive of interest and costs. (See Exhibit 3, Petition, ¶ 10, and Prayer for Relief).

6. Contemporaneous with Safeco's filing of this Notice, Safeco will serve written notice to Plaintiff's counsel of the filing, as required by 28 U.S.C. §1446(d).

7. Safeco shall likewise file a true and correct copy of its Notice of

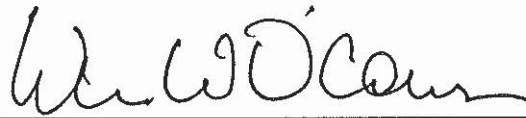
¹ Safeco does not concede that Plaintiff is entitled to recover attorneys' fees. Rather, Safeco looks solely at the allegations in the Petition to determine amount in controversy. See *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995) ("The amount in controversy is ordinarily determined by the allegations of the complaint....").

Removal with the Clerk of the District Court in and for Cleveland County, State of Oklahoma, as required by 28 U.S.C. §1446(d).

CONCLUSION

Defendant Safeco Insurance Company of America respectfully requests that the State Court Action be removed from the District Court for Cleveland County, Oklahoma, to the United States District Court for the Western District of Oklahoma, and proceed as an action properly removed thereto.

Respectfully submitted,



William W. O'Connor, OBA No. 13200

Lindy H. Collins, OBA No. 30579

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**ATTORNEYS FOR DEFENDANT,
SAFECO INSURANCE COMPANY OF
AMERICA**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Notice of Removal* was sent via U.S. Mail this 19 day of February, 2013 to the following:

Jack F. Tracy, Sr.
201 West Main Street
Purcell, OK 73080



William W. O'Connor